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ABSTRACT

This court litigation reverses Farris and Black of Home School Legal Defense Association v. South Carolina State Board of Education, which found that the Education Entrance Examination (EEE) was properly validated for use in testing home school instructors as regulated by S. C. Code Ann. Section 59-65-40(A)(1)(a)(1990), the home schooling statute (HSS). The HSS ensures that use of the EEE is reasonable since validation requires an appraisal of the examination's suitability to test an examinee's ability in a given context. After passage of the HSS, the Department of Education (DOE) contracted with IOX Assessment Associates to evaluate the EEE's suitability. The IOX assembled a 33-member panel (17 home school instructors and 16 public school and college teachers) that evaluated each EEE item for task-relatedness and bias. Based on the results, the DOE validated the EEE as provided in the HSS. Lawrence et al. challenge the validation process on several grounds, and hold that the validation process does not meet a standard of reasonableness. These appellants contend that: the validation is defective because panelists were given no "job analysis" or description of successful home schooling; and since 16 of the panelists knew nothing about home schooling, it is manifestly unreasonable to rely on their evaluations of task-relatedness in validating the EEE. The discrepancy in task-relatedness scores for the home schoolers compared to the entire group show that the panelists' qualifications impacted these scores. This South Carolina Supreme Court case finds that the State's validation process fails to meet a standard of reasonableness, and the requirement that parents pass the EEE is unenforceable under the HSS. (RLC)

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

Timothy Lawrence, Richard Kaiser, Deborah Kaiser and Maureen Deaton as representatives of the class of persons who are members of the Home School Legal Defense Association,

Appellants,

South Carolina State Board of Education,

Respondent.

Appeal from Richland County
Ellis B. Drew, Jr., Special Circuit Judge

Opinion No. 23526
Heard October 31, 1991 - Filed December 9, 1991

REVERSED

Michael P. Farris and Dewitt T. Black, of Home School Legal Defense Association, of Paeonian Springs, Virginia, for Appellants.

Chief Deputy Attorney General Joseph D. Shine and Assistant Attorney General J. Emory Smith, Jr., both of Columbia, for Respondent.

GREGORY, C.J.: Appellants commenced this action to enjoin enforcement of S. C. - Code Ann. 59-65-40(A)(1)(a)(1990) which regulates home schooling programs. The statute requires parents holding only a high school diploma to pass a basic Skills examination known as the Education Entrance Examination (EEE) in order to be approved for home schooling. The trial Judge found the EEE was properly validated for use in testing home school instructors. We reverse.

Home schooling is a statutorily provided alternative to compulsory attendance at a public or private school. See S.C.

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Code Ann. 59-65-10 (1990)[1]. The threshold issue here is the degree of regulation permissible in balancing the State's interest in compulsory education and the parents' recognized interest in the nurture and education of their children. In Wisconsin v. Yoder, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1977), the United States Supreme Court recognized the strength of both these interests but noted that where the parents interest in education is secular in nature rather than religious, the State may constitutionally require compulsory education in a public or private school. 92 S.Ct. at 1542. The Court went on to hold that even where parents may exempt their children from school attendance on the ground of free exercise of religion, nothing "limit[s] the power of the State to promulgate reasonable standards" concerning the content of parent-provided education programs. 92 S.Ct. at 1543. We conclude under Yoder the State clearly has the power to impose "reasonable standards" on home schooling programs which the State has chosen to offer as an alternative to compulsory school attendance.

Section 59-65-40(A)(1)(a) provides for approval of a home schooling program if the parent:

> (a) holds at least a high school diploma or the equivalent general educational development (GED) certificate and, beginning In the 1989-90 school year, attains a passing score on the basic skills examination developed pursuant to Section 59-26-20 (b)(1)[2] after the State Department of Education has validated the test for use with home schooling parents .... (Emphasis added).[3]

Section 59-65-40 conditions use Of the basic skills examination upon its validation for home schooling use. Thus, the statute ensures that use of this particular test is

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[1] Home schooling programs have their own attendance requirements since they must have an instructional day of at least four and one-half hours, excluding lunch and recesses, for at least one hundred eighty days per year. S. C, Code Ann. 59-65-40(A)(2) (1990).

[2] The statutory reference to 59-26-20(b)(1) Is illogical and was found below to be intended as 59-26-30(b)(1) which discusses the basic skills examination, Appellants have not appealed the trial judge's finding construing the statute in this regard.

[3] Parents who have earned a baccalaureate degree are not required to take the EEE for home schooling approval. S.C. Code Ann. 59-65-40(A)(1)(b) (1990). Appellants have not challenged this disparity of treatment.

reasonable since validation requires an appraisal of the examination's suitability to test an examinee's ability in a given context. If the validation process is itself unreasonable, however, the examination is not properly validated and the requirement that a parent pass such an examination is unenforceable under 59-66-40(A)(1)(a). Appellants challenge the validation process on several grounds. We hold the validation process implemented here does not meet a standard of reasonableness.

The facts surrounding the validation process are as follows. The basic skills examination or EEE developed by the Board of Education is used to test entrance level education students. The EEE tests only basic ability in reading, writing, and mathematics; it does not test teaching ability. After passage of the home schooling statute, the Department of Education contracted with IOX Assessment Associates to evaluate the EEE 's suitability to test home schooling instructors. IOX assembled a panel of thirty-three members; seventeen panelists were home schoolers, the remaining sixteen were public school and college teachers. The panelists were asked to evaluate each item on the EEE for (1) task-relatedness and (2) bias. For task relatedness, the panelists were asked whether the knowledge or skill needed to answer the particular item on the EEE was "a necessary prerequisite" for home schoolers. To evaluate bias, panelists were asked whether the item on the EEE would offend or unfairly penalize any group of examiners based on personal characteristics such as gender, ethnicity, religion, or socioeconomic status.

Panelists who were not home schoolers were given no description of the requirements for successful home schooling. These sixteen panelists were not familiar with home schooling or were never asked if they knew anything about it.

IOX evaluated the responses given by the entire panel and scored them as follows;

1) task-relatedness:		2) bias:	
reading	84%	reading	10%
math	79%	math	4%
writing	75%	writing	39%

The responses given by the sub-group consisting only of panelists who were home schoolers were scored as follows:

1) task-relatedness:		2) bias:	
reading	74%	reading	12%
math	66%	math	8%
writing	56%	writing	50%

IOX evaluated the scores given by the entire panel and reported to the Department of Education that these scores were acceptable to validate the EEE for use in home schooling. The Department subsequently validated the EEE as provided in 59-65-40(A)(1)(a).

Appellants contend the validation Is defective because panelists were given no "job analysis" or description of successful home schooling. Since sixteen of the thirty-three panelists knew nothing about home schooling, we agree with appellants it is manifestly unreasonable to rely on their evaluations of task-relatedness in validating the EEE. Task-relatedness evaluations required a panelist to judge whether the EEE item tested some knowledge or skill that was "a necessary prerequisite" to home schooling. Sixteen of the panelists were not qualified to make this evaluation since they were given no information as to what the prerequisites for home schooling were.

Further, the noticeable discrepancy in task-relatedness scores for the sub-group consisting only of panelists who were home schoolers as compared to the entire group indicates the panelists' qualifications impacted on these scores. The scores from panelists who were public school and college teachers were 20-44% higher than the scores of home schooling panelists regarding task-relatedness. These statistics indicate that panelists with no knowledge of home schooling found the EEE items more task-related to home schooling than those panelists who were familiar with home schooling.

Board of Education relies heavily on two main arguments to justify use of the EEE. First, it contends the EEE is designed to test basic literacy which is an underlying qualification for teaching whether the educational setting is public school or home. This argument relies on the theory of validity generalization which means that the validity of a test established for one task may be assumed or generalized for another task if the tasks are reasonably similar. This argument overlooks one important fact: the statute itself specifically requires validation of the EEE for home schooling, indicating the legislature implicitly found the tasks of home schooling and public school teaching too dissimilar to employ the validation of the EEE that was already done for public school teaching,

Board of Education also points to the fact that home schoolers who have taken the EEE have a high pass rate: 258 of 310 examinees have received a passing score. The fact that home schoolers can pass the EEE does not mean it is reasonable to require them to do so as a prerequisite for home schooling. At best, the high pass rate indicates the FEE requirement has infringed little on parents' entitlement to home schooling; it does not, however, justify the imposition of such a requirement. We find the State's validation process fails to meet a standard of reasonableness and the requirement that parents pass the EEE is unenforceable under 59-65-40(A)(1)(a) which conditions its use upon validation.

REVERSED.

HARWELL, CHANDLER, FINNEY and TOAL, JJ., concur.